

## Message Text

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ACTION EA-14

INFO OCT-01 ISO-00 PM-07 NSC-07 SP-03 SS-20 RSC-01 L-03

H-03 CIAE-00 INR-10 NSAE-00 OMB-01 DRC-01 /071 W

----- 058617

R 170927Z MAY 74

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 3574

INFO SECDEF

CSAF (JACI)

NAVY JAG-WASHDC

CINCPAC

CINCPACAF

CINCPACFLT

CINCPACREPPHIL

13AF

405 CSG

C O N F I D E N T I A L SECTION 1 OF 2 MANILA 5847

E.O. 11652: GDS

TAGS: MARR, RP

SUBJECT: DRAFT MBA ARTICLE XIII- NEED FOR CLEARER DEFINITION  
OF INTER SE OFFENSES

REF: STATE 097714

BEGIN SUMMARY: EMB APPROVES CHANGES TO DRAFT  
ARTICLE XIII CONTAINED IN REFTEL. DEFINITION  
OF INTER SE REMAINS PROBLEM (ART. XIII 1(B)).  
WHILE INTER SE CASE ASSERTIONS FEW (20 OF ABOUT  
940 CASES IN 1973) GOP HAS QUESTIONED PRACTICALLY  
EVERY ONE IN LAST TWO YEARS. GOP UTILIZES  
PHILIPPINE CRIMINAL CODE CATEGORIES TO LIMIT TYPE  
OF OFFENSES THAT QUALIFY AS INTER SE. CONFRONTATION  
AVOIDED BY DISCUSSION IN CRIMINAL JURISDICTION  
IMPLEMENTATION COMMITTEE AND AD HOC SETTLEMENT OF  
CASES BY US MILITARY AUTHORITIES BUT DANGER EXISTS  
THAT SERIOUS INTER SE CASE MAY CAUSE DIFFICULT  
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PROBLEM FOR BOTH GOVERNMENTS. GOP POSITION UNYIELDING

UNDER PRESENT AND PROPOSED WORDING OF ARTICLE XIII  
(3(B)(II) 1965 AMENDMENT OR 1(B) PROPOSED DRAFT)  
AS THEY MAKE LITERAL INTERPRETATION OF  
INTER SE PROVISIONS VIS-AAVIS GOP CRIMINAL CODE.  
EMB RECOMMENDS EXCHANGE OF NOTES AND SUGGESTS WORDING  
TO OVERCOME IMPASSES. REQUEST COMMENTS. END SUMMARY.

1. EMB APPRECIATES COMMENTS AND APPROVES CHANGES  
TO ART. XIII IN REFTEL. WOULD NOT ANTICIPATE GOP  
WILL HAVE DIFFICULTY WITH INSERTION OF "RIGHT TO  
EXERCISE" IN THE SIX PLACES IN DRAFT ARTICLE WHERE  
WORD JURISDICTION APPEARS. GOP MAY EXPERIENCE SOME  
HESITATION ON PHRASE "REGULAR CONSTITUTED CIVILIAN  
COURTS." AMENDMENT TO MARTIAL LAW GENERAL ORDER  
12-A PREVENTED US FORCES PERSONNEL FROM BEING  
BROUGHT BEFORE MILITARY TRIBUNAL EXCEPT CASES  
INVOLVING" ...SUBVERSION, REBELLION, SEDITION AND  
ANY OTHER CRIME COMMITTED IN FURTHERANCE OR ON THE  
OCCASION OF OR INCIDENT TO OR IN CONNECTION WITH  
SAID CRIMES..." HOPEFULLY, PHILS WILL NOT INSIST  
ON MAINTAINING THESE EXCEPTIONS. IN ANY EVENT,  
EMB BELIEVES ESSENTIAL TO HAVE ARTICLE CONTAIN  
SAFEGUARD RE MILITARY TRIBUNALS AND DEPT'S  
WORDING APPEARS TO BE UNOBTRUSIVE AND TO HAVE GOOD  
CHANCE OF GOP ACCEPTANCE.

2. WHILE IS IN FULL AGREEMENT THAT SUBSTANTIVE  
ISSUES SHOULD NOT BE REOPENED, OUR CJIC EXPERIENCE  
IN WHICH INTER SE QUESTIONS HAVE COME UP  
REPEATEDLY HAS CONVINCED US OF NEED TO OBTAIN MORE  
CLEAR-CUT DEFINITION OF SUCH OFFENSES. PRACTICALLY  
EVERY INTER SE ASSERTION THAT US MILITARY AUTHORITIES  
HAVE MADE IN LAST TWO YEARS OR SO HAS BEEN CHALLENGED  
BY DEPT OF JUSTICE AND CASES HAVE HAD TO BE  
DISCUSSED IN CJIC QUARTERLY MEETINGS. CONFRONTATIONS  
IN SUCH CASES HAVE BEEN AVOIDED BY THE US  
MILITARY LEGAL OFFICERS FINDING PRACTICAL WAYS  
OF SETTLING CASES IN AD HOC MANNER. THIS HAS BEEN  
POSSIBLE BECAUSE CASES ARE FEW (20 IN 1973) AND HAVE  
INVOLVED RELATIVELY MINOR OFFENSES SUCH AS ORAL  
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DEFAMATION. NEVERTHELESS, CONFRONTATION POTENTIAL  
IS A CONSTANT DANGER IN THESE CASES.

3. DEPT OF JUSTICE POSITIONS IS THAT INTER  
SE ASSERTION ONLY PROPER WHEN OFFENSE FALLS WITHIN  
THEIR DOMESTIC CRIMINAL CODE CATEGORY OF "CRIMES  
AGAINST PROPERTY" AND "CRIMES AGAINST PERSONS."  
(A LITERAL INTERPRETATION OF PARA 3(B)(II) OF 1965

CRIMINAL JURISDICTION AMENDMENT).

4. CRIMES AGAINST PROPERTY" INCLUDE ROBBERY, THEFT, ESTAFA (FRAUD) AND ARSON. "CRIMES AGAINST PERSONS" INCLUDE HOMICIDE AND PHYSICAL INJURIES IN ITS VARIOUS FORMS. PHILIPPINE CRIMINAL CODE IS DIVIDED INTO FOURTEEN SEPARATE CATEGORIES. BESIDES ABOVE TWO THE CLASSIFICATIONS ARE (1) CRIMES AGAINST NATIONAL SECURITY AND THE LAW OF NATIONS; (2) CRIMES AGAINST THE FUNDAMENTAL LAWS OF THE STATE; (3) CRIMES AGAINST PUBLIC ORDER; (4) CRIMES AGAINST PUBLIC INTERESTS; (5) CRIMES RELATIVE TO OPIUM AND OTHER PROHIBITED DRUGS- REPLACED BY THE 1972 DANGEROUS DRUG ACT; (6) CRIMES AGAINST PUBLIC MORALS; (7) CRIMES COMMITTED BY PUBLIC OFFICERS; (8) CRIMES AGAINST PERSONAL LIBERTY AND SECURITY; (9) CRIMES AGAINST CHASTITY; (10) CRIMES AGAINST THE CIVIL STATUS OF PERSONS; (11) CRIMES AGAINST HONOR AND (12) QUASI OFFENSES.

5. AS A PRACTICAL MATTER ONLY CATEGORIES (6), (8), (9), (11) AND PERHAPS (5) AND (10) THAT INCLUDE FRUG AND BIGAMY OFFENSES RESPECTIVELY, INVOLVE OFFENSES THAT USG WOULD CONSIDER WITHIN INTER SE CATEGORY IF VICTIM AND PERPETRATOR ARE BOTH UNDER MBA. SUCH OFFENSES AS GAMBLING, GRAVE SCANDAL, KIDNAPPING, GRAVE AND LIGHT THREATS, ADULTERY, RAPE, QUALIFIED AND SIMPLE SEDUCTION, CONSENTED ABDUCTION, LIBEL, SLANDER, AND SLANDER BY DEED ARE OFFENSES THAT UNDER GOP INTERPRETATION CANNOT BE CONSIDERED INTER SE SINCE THEY DO NOT FALL WITHIN THE APPROPRIATE CATEGORIES OF THE PHIL CRIMINAL CODE: NAMELY CRIMES AGAINST PROPERTY AND CRIMES AGAINST PERSONS.

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6. EMBOFFS, AS WELL AS MILITARY LEGAL OFFICERS, HAVE DISCUSSED THIS PROBLEM WITH DEPT OF JUSTICE PERSONNEL ON MANY OCCASSIONS INCLUDING DISCUSSIONS OF INDIVIDUAL INTER SE CASES AT PRACTICALLY EVERY CJIC MEETING. FISCALS IN ANGELES AND OLONGAPO SEEM TO BE LOCKED IN CONCRETE RE THEIR INTER SE INTERPRETATIONS WHICH ARE CLOSELY SCRUTINIZED BY SECRETARY OF JUSTICE ABAD-SANTOS WHO APPEARS TO BE PROGENITOR GOP INTER SE THEORY. ARGUMENTS THAT GOP HAS NO RIGHT TO UNILATERALLY APPLY DOMESTIC CRIMINAL CODE TO INTERPRET INTERNATIONAL AGREEMENT, THAT NO OTHER COUNTRY WITH WHICH US HAS SIMILAR SOFA PROVISION RESTRICTS INTER SE IN PHIL MANNER, AND GENERAL PHILOSOPHICAL DISCUSSION OF WHICH

STATE HAS MOST INTEREST IN THESE TYPE OFFENSES  
HAVE BEEN MADE EXHAUSTIVELY AND REPEATEDLY --TO NO  
AVAIL.

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ACTION EA-14

INFO OCT-01 ISO-00 PM-07 NSC-07 SP-03 SS-20 RSC-01 CIAE-00

INR-10 NSAE-00 L-03 OMB-01 H-03 DRC-01 /071 W  
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R 170927Z MAY 74

FM AMEMBASSY MANILA  
TO SECSTATE WASHDC 3575  
INFO SECDEF

CSAF (JACI)  
NAVY JAG-WASHDC  
CINCPAC  
CINCPACAF  
CINCPACFLT  
CINCPACREPPHIL  
13AF  
405 CSG

C O N F I D E N T I A L SECTION 2 OF 2 MANILA 5847

7. CONSEQUENTLY, WE DEEM IT IMPERATIVE TO ATTEMPT  
TO RESOLVE THIS MATTER IN NEGOTIATIONS AND TO  
SEEK TO DRAFT A MUTUALLY AGREEABLE DEFINITION  
OF INTER SE OFFENSES. OTHERWISE, SOONER OR LATER,  
A CONFRONTATION ON A SERIOUS CASE WILL BE UNAVOIDABLE.

8. EMB SEES THREE APPROACHES TO RESOLUTION OF  
PROBLEM: (1) CHANGE WORDING OF ART. XIII 1(B) OF PRESENT  
DRAFT; (2) EXCHANGE OF NOTES, AND (3) AGREED MINUTE.  
WE HAVE REJECTED (1) AS PRESENT WORDING  
IS STANDARD IN OTHER SOFA'S AND IF CHANGED MAY  
CAUSE DIFFICULTY IN OTHER COUNTRIES. ALSO (3) IS  
REJECTED AS PRESENT FORMAT OF DRAFT MBA HAS NOT  
UTILIZED AGREED MINUTES BUT HAVE RESORTED TO  
EXCHANGE OF NOTES SIMILAR TO ONE PROPOSED ON  
OFFICIAL DUTY PROCEDURES. THEREFORE, WE PROPOSE

THE FOLLOWING WORDING FOR AN EXCHANGE OF NOTES IN  
RELATION TO INTER SE. QUOTE THE EMB OF USA  
PRESENTS ITS COMPLIMENTS TO THE DFA OF REPUBLIC  
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OF THE PHILIPPINES AND HAS THE HONOR TO REFER  
TO THE RECENT AMENDMENT OF PARAGRAPH 1(B) OF  
ARTICLE XIII OF THE MBA AND TO THE DISCUSSIONS  
BETWEEN OFFICIALS OF THE TWO GOVERNMENTS ABOUT  
OFFENSES THAT FALL WITHIN THE PURVIEW OF THAT  
PARAGRAPH. PARA THE EMB WISHES TO PROPOSE THE  
FOLLOWING CRITERIA IN ORDER TO DETERMINE THE  
OFFENSES WHICH WILL BE CONSIDERED TO BE WITHIN  
THE CITED PARAGRAPH. PARA WHEN A MEMBER OF THE  
UNITED STATES ARMED FORCES, CIVILIAN COMPONENT  
OR DEPENDENT THEREOF IS CHARGED WITH AN OFFENSE  
IN WHICH THE VICTIM OF THE OFFENSE IS ALSO A MEMBER  
OF THE UNITED STATES ARMED FORCES, CIVILIAN  
COMPONENT OR DEPENDENT THEREOF, SUCH OFFENSE IS  
CONSIDERED TO BE WITHIN THE PROVISIONS OF ARTICLE  
XIII 1(B) WITH THE EXCEPTION OF WHEN THE  
VICTIM IS A DEPENDENT WHO HOLDS PHILIPPINE CITIZENSHIP  
AND THE OFFENSE IS ONE DESIGNATED IN ARTICLE  
XIII 1(B). PARA IF THE SAME CRIMINAL ACT COMMITTED  
BY A MEMBER OF THE UNITED STATES ARMED FORCES,  
CIVILIAN COMPONENT OF A DEPENDENT THEREOF RESULTS  
IN CHARGES OF TWO OR MORE DIFFERENT OFFENSES, AND  
IN ONLY ONE OR MORE OF SUCH OFFENSES, THE VICTIM  
IS A MEMBER OF THE UNITED STATES ARMED FORCES,  
CIVILIAN COMPONENT OR DEPENDENT THEREOF WITH THE  
EXCEPTION OF THE DEPENDENTS AND OFFENSES SPECIFIED  
IN ARTICLE XIII 1(B), THEN ONLY SUCH AN OFFENSE OR  
OFFENSES WILL BE CONSIDERED WITHIN THE PROVISIONS  
OF ARTICLE XIII 1(B) AND ALL OTHER OFFENSES SHALL  
BE CONSIDERED NOT WITHIN THAT CATEGORY. PARA  
UPON RECEIPT OF A NOTE FROM THE DFA INDICATING  
THAT THE FOREGOING IS ACCEPTABLE TO THE  
GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES,  
THE UNITED STATES GOVERNMENT WILL CONSIDER THAT  
THE NOTE AND THE REPLY THERETO CONSTITUTE AN  
AGREEMENT BETWEEN THE TWO GOVERNMENTS ON THIS  
SUBJECT, WHICH SHALL TAKE EFFECT CONCURRENTLY  
WITH THE DATE OF EFFECTIVITY OF THE REVISED  
ARTICLE XIII PARAGRAPH 1(B) WHICH IT IMPLEMENTS.  
UNQUOTE.

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9. EMB RECOGNIZES THAT PRESENT WORDING IN ARTICLE XIII 1(B) AS TO RAPE OFFENSES, IF VICTIM IS PHIL NATIONAL DEPENDENT, APPEARS SOMEWHAT INCONSISTENT WITH PHIL POSITION THAT RAPE CANNOT IN ANY EVENT BE INTER SE AS IT FALLS WITHIN THEIR CRIMINAL CODE CATEGORY AS "CRIMES AGAINST CHASTITY." HOWEVER, PRESENT WORDING OF ARTICLE XIII 1(B) WAS DEVELOPED BEFORE PHIL PRESENT POSITON WAS ENUNCIATED AND EMB BELIEVES INTER SE CRITERIA COULD BE SURFACED AND PROPOSED EXCHANGE OF NOTES TABLED WHEN FURTHER DISCUSSION OF THIS PROBLEM ENSUES IN TECHNICAL PANEL.

10. REQUEST APPROVAL OR COMMENTS.  
SULLIVAN

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** AGREEMENT DRAFT, MARTIAL LAW, MILITARY PERSONNEL, CRIMES, MILITARY BASE AGREEMENTS, COURTS MARTIAL, ARRESTS, NEGOTIATIONS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 17 MAY 1974  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** GarlanWA  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1974MANILA05847  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
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**Executive Order:** GS  
**Errors:** N/A  
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**From:** MANILA  
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**Office:** ACTION EA  
**Original Classification:** CONFIDENTIAL  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
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**Previous Classification:** CONFIDENTIAL  
**Previous Handling Restrictions:** n/a  
**Reference:** STATE 097714  
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**Review Authority:** GarlanWA  
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**Review Content Flags:**  
**Review Date:** 07 AUG 2002  
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**Review Exemptions:** n/a  
**Review History:** RELEASED <07-Aug-2002 by worrelsw>; APPROVED <24 FEB 2003 by GarlanWA>  
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30 JUN 2005

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** DRAFT MBA ARTICLE XIII- NEED FOR CLEARER DEFINITION OF INTER SE OFFENSES  
**TAGS:** MARR, RP, US  
**To:** STATE  
**Type:** TE  
**Markings:** Declassified/Released US Department of State EO Systematic Review 30 JUN 2005